APPENDIX A

Names of Appellees

Baggett Transportation Co.

Georgia Highway Express, Inc.

Mercury Freight Lines, Inc.

Roadway Express, Inc.

T.I.M.E., Incorporated

Transcon Lines

The Atchison, Topeka & Santa Fe Railroad Company

Chicago, Rock Island and Pacific Railroad Company

Fort Worth and Denver Railroad Company

Illinois Central Railroad

Missouri Pacific Railroad Company

St. Louis-San Francisco Railway Company

The Texas and Pacific Railway Company

Acme Fast Freight, Inc.

National Carloading Corporation

Republic Carloading & Distribution Company

Universal Carloading & Distributing Co., Inc.

Western Carloading Company, Inc.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action Number 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Plaintiffs*

v.

UNITED STATES, ET AL., *Defendants*

Braswell Motor Freight Lines, Inc., intervening defendant, moves the Court to amend and supplement its finding of fact and conclusions of law set forth in the Opinion or Memorandum of Decision heretofore filed, in the following particulars:

1. Amend the last paragraph, page 10 of the Opinion or Memorandum of Decision, to read as follows:

> "It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission does not measure up to indicated standards and that such report and order should be vacated and annulled. In this proceeding we have limited our review to the report and order of the Commission which we have before us and such examination of the record as was necessary to test the validity of this particular report and order. This Court has not undertaken to search the record or to weigh the evidence to determine whether the Commission should, on reconsideration, grant or deny the application. The Interstate Commerce Commission should be enjoined from issuing a permit or franchise to the applicant for the reasons stated; and this proceeding should be remanded to the Interstate Commerce Commission for its reexamination and study and further action thereon

not inconsistent with the opinion of the Court herein. The temporary injunction heretofore issued in this case will be made permanent. The bond for the temporary injunction will be discharged. A judgment accordingly may be presented for entry."

The grounds of this motion are stated in the attached Memorandum.

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APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action Number 1273

DIXIE HIGHWAY EXPRESS, INC., ET AL., *Plaintiffs*

v.

UNITED STATES, ET AL., *Defendants*

Order Overruling Motion of Braswell Motor Freight Lines, Inc.

The motion of Braswell Motor Freight Lines, Inc. to amend the findings and conclusions contained in the opinion of the Court in this case being heard and considered and the Court being of the opinion that said motion is without merit;

IT IS ORDERED AND ADJUDGED by the Court that said motion be and it is hereby overruled.

ORDERED, this August 16, A.D., 1965.

JOHN MINOR WISDOM
United States Circuit Judge

GRIFFIN B. BELL
United States Circuit Judge

HARRIED COX
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1273

DIXIE HIGHWAY EXPRESS, INC.; ALABAMA HIGHWAY EXPRESS, INC.; ACME FAST FREIGHT, INCORPORATED; BAGGETT TRANSPORTATION COMPANY; BOWMAN TRANSPORTATION, INC.; GEORGIA HIGHWAY EXPRESS, INC.; JACK COLE COMPANY; ROADWAY EXPRESS, INC.; T.I.M.E. FREIGHT, INC.; TRANSCON LINES; UNIVERSAL CARLOADING & DISTRIBUTING CO., INC.; WESTERN CARLOADING CO., INC.; WEST BROTHERS, INC.; MERCURY FREIGHT LINES, INC.; GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, INC.; CAMPBELL SIXTY-SIX EXPRESS, INC.; UNITED MOTOR FREIGHT TERMINAL, INC.; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; FORT WORTH AND DENVER RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD; MISSOURI PACIFIC RAILROAD COMPANY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and THE TEXAS AND PACIFIC RAILWAY COMPANY; NATIONAL CARLOADING CORPORATION, *Plaintiffs*

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, *Defendants*

and

BRASWELL MOTOR FREIGHT LINES, INC.,
Intervening Defendant

Motion to Enforce Judgment

Plaintiffs, pursuant to Section 1651 of the Judicial Code, [28 U.S.C. § 1651] and the rules of this Court, respectfully move the Court, constituted as a three-judge court pursuant to 28 U.S.C. Sections 2284 and 2325 (consisting

of Circuit Judges John Minor Wisdom and Griffin B. Bell and District Judge William Harold Cox) to enforce the Judgment entered by this Court on July 16, 1965 (Appendix I), which Judgment was entered pursuant to the Court's Opinion entered June 23, 1965 (Appendix II).

Specifically, Plaintiffs ask the Court to enter an order holding that the report and order of the Interstate Commerce Commission, served February 18, 1966 (Appendix III), in MC-1968 Sub. No. 73, *Braswell Freight Lines, Inc., Extension—Atlanta* re-numbered and re-entitled MC-111383 Sub No. 16, *Braswell Motor Freight Lines, Inc., Extension—Atlanta*), 100 M.C.C. 482, is not in compliance with the prior Opinion and Judgment of this Court, and is therefore a nullity.

As of the time of the preparation of this Motion, Plaintiffs are advised that the Interstate Commerce Commission has not issued a Certificate of Public Convenience and Necessity to the Intervening Defendant, Braswell Motor Freight Lines, Inc., pursuant to the decision of the Interstate Commerce Commission (Appendix III). However, should such a Certificate be issued before the Court passes on this Motion, Plaintiffs further ask the Court to direct the Interstate Commerce Commission to rescind the issuance of such Certificate.

In support of this Motion, Plaintiffs would respectfully show the Court:

1.

On July 19, 1965, this Court entered a final judgment and decree (Appendix I) in conformity with the Court's opinion entered June 23, 1965 (Appendix II), setting aside as unlawful the report and order of the Interstate Commerce Commission dated July 1, 1964 (95 M.C.C. 457), and the order dated December 28, 1964, insofar as it denied petitions for reconsideration in Docket No. MC-1968, Sub No. 73 (renumbered Docket No. MC-111383 Sub No. 16).

2.

On July 19, 1965 (service date July 26, 1965), the Interstate Commerce Commission entered an order setting the orders of July 1 and December 28, 1964, and ordering that the proceeding be reopened for further consideration by the Commission (Appendix IV).

3.

No appeal was taken from this Court's opinion or judgment;

4.

Intervening Defendant, Braswell Motor Freight Lines, Inc., filed a motion to amend and supplement the Court's findings of fact and conclusions, requesting, among other things, that the last paragraph on page 10 of this Court's Opinion be amended.

Ths paragraph of the Court's Opinion reads as follows:

> "It is the view of this Court without prolonging this opinion that the report and order of the Interstate Commerce Commission thereon is not supported by the record and does not measure up to indicated standards, and that such report and order should be vacated and annulled. The Interstate Commerce Commission should be enjoined from issuing a permit or franchise to the applicant for the reasons stated; and this proceeding should be remanded to the Interstate Commerce Commission for its re-examination and study and further action thereon not inconsistent with the opinion of the Court herein. The temporary injunction heretofore issued in this case will be made permanent. The bond for the temporary injunction will be discharged. A judgment accordingly may be presented for entry."

The effect of the Intervening Defendant's proposed amendment would have been to strike the Court's holding

that the report and order of the Interstate Commerce Commission was not supported by the record and to substitute in lieu thereof the following:

> "In this proceeding, we have limited our review to the report and order of the Commission which we have before us and such examination of the record as was necessary to test the validity of this particular report and order. This Court has not undertaken to search the record or to weigh the evidence to determine whether the Commission should, on reconsideration, grant or deny the application.";

5.

This Court overruled the aforesaid motion of Intervening Defendant by an order dated August 16, 1965 (Appendix V);

6.

No other motion to modify the Court's opinion or the Court's final judgment was made;

7.

Without conducting a further hearing, without taking any additional evidence, and without receiving any other pleadings from the parties, the Interstate Commerce Commission, on February 18, 1966, published, with two Commissioners dissenting, its decision (Appendix III). The effect of this decision is only to reiterate, contumaciously, that which the Commission had previously found and held in the orders which this Court set aside;

8.

The evidence before the Interstate Commerce Commission was the same. The reasons advanced by the Commission are the same. The conclusions reached by the Commission are the same, except that in the most recent decision the grant of alternate route authority is deleted. Therefore, the decision of the Interstate Commerce Com-

mission of February 18, 1966, is patently not in compliance with this Court's judgment and is in no wise "further action thereon not inconsistent with the Opinion of this Court herein".

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that:

(1) This Court hold the report and order of the Interstate Commerce Commission in Braswell Motor Freight Lines, Inc., Extension—Atlanta, MC-111383 (Sub-No. 16), served February 18, 1966, to be a nullity and direct the Commission to act in Docket No. MC-111383 (Sub-No. 16) in accordance with the judgment of this Court entered July 16, 1965, and in accordance with the Court's opinion entered June 23, 1965;

(2) If, prior to the time of the hearing on this Motion, the Interstate Commerce Commission shall have issued a Certificate of Public Convenience and Necessity to the Intervening Defendant, Braswell Motor Freight Lines, Inc., in Docket No. MC-111383 (Sub-No. 16), the Court make an order requiring the Interstate Commerce Commission to rescind said Certificate;

(3) That the Plaintiffs have such other and further relief as they may be entitled to in the premises.

Respectfully submitted,

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MISSOURI PACIFIC RAILROAD COMPANY;
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Certificate of Service

I certify that I have this day served a copy of the foregoing motion upon counsel of record, as listed below, by mailing copies thereof to each such party via first class mail, posted prepaid.

Dated at Jackson, Mississippi, this day of March, 1966.

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Hon. Bob W. Fleming
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Hon. M. Ward Bailey
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APPENDIX I

Final Judgment and Decree of U. S. District Court for the Southern District of Mississippi, dated July 16, 1965, printed as Appendix E to Jurisdictional Statement of appellants Interstate Commerce Commission and United States.

APPENDIX II

Decision of U. S. District Court for the Southern District of Mississippi, dated June 23, 1965, printed as Appendix D to Jurisdictional Statement of Interstate Commerce Commission and United States.

APPENDIX III

Decision of Interstate Commerce Commission dated January 17, 1966, in *Braswell Motor Freight Lines, Extension—Atlanta,* printed as Appendix C to Jurisdictional Statement of appellants Interstate Commerce Commission and United States.

APPENDIX IV

Service Date
July 26, 1965

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 19th day of July, A.D. 1965.

No. MC-1968 (Sub-No. 73)

BRASWELL FREIGHT LINES, INC., EXTENSION—ATLANTA
(El Paso, Tex.)

Renumbered and reentitled

No. MC-111383 (Sub-No. 16)

BRASWELL MOTOR FREIGHT LINES, INC.,
EXTENSION—ATLANTA

(El Paso, Tex.)

It appearing, That on June 23, 1965, the United States District Court for the Southern District of Mississippi in

Civil Action No. 1273 (E)(M), *Dixie Highway Express* v. *United States,* vacated and annulled the report and orders of the Commission, Division 1, of July 1 and December 28, 1964, in the above-entitled proceeding and remanded said proceeding to the Commission for reconsideration in accordance with its opinion, and for good cause:

It is ordered, That the orders of the Commission, Division 1, entered July 1, 1964, and December 28, 1964, in the above-entitled proceeding, be, and they are hereby, vacated and set aside, and

It is further ordered, That the above-entitled proceeding be, and it is hereby, reopened for further consideration by the Commission.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

APPENDIX V

Order of United States District Court for the Southern District of Mississippi dated October 18, 1965, printed as Appendix C to appellees' Motion to Dismiss.